**DOCUMENT RESUME**

ED 160 502 SO 011 156


AUTHOR McKay, Robert B.


TITLE Legal Education.
INSTITUTION Aspen Inst. for Humanistic Studies, Palo Alto, Calif. Program on Justice, Society and the Individual.
PUB DATE 77
NOTE 16p.
AVAILABLE FROM Aspen Institute, 360 Bryant Street, Palo Alto, California ($1.50, paper cover)

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS Curriculum; *Educational Assessment; Educational History; *Educational Needs; Educational Objectives; Educational Practice; Higher Education; Justice; *Law Schools; *Legal Education; Moral Issues; *Moral Values; *Professional Education; Standards; State of the Art Reviews



ABSTRACT

The monograph assesses the state of legal education as provided in law schools in the United States today. Positive aspects of legal education include technical proficiency, superb law faculties, good law students, and excellent facilities and libraries. The most striking negative aspect of legal education is its resistance to change. This resistance can be illustrated by the following examples: (1) rejection of efforts to infuse the study of law with information from the social sciences and humanities; (2) failure to utilize modern teaching methods such as problem solving, research seminars, clinical training, and simulation; (3) acquiescence to contemporary legal morality; (4) reinforcement of recruitment practices in law firms and law schools which discriminate against women and minority group members; and (5) failure to make major changes in the law school curriculum since 1870. The conclusion is that law schools should become more responsive to political and social morality. Recommendations for achieving this objective include preparing law students to become dispensers of justice and modernizing legal education so that it is responsive to contemporary social needs. (DB)



**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

- ED160502

An Occasional Paper/Aspen Institute for Humanistic Studies
Program on Justice, Society and the Individual

# Legal Education

## Robert B. McKay

**Director**
**Aspen Institute Program on**
**Justice, Society and the Individual**

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
Richard E. Kuhn

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

SP 011 156

Aspen Institute for Humanistic Studies

**Library of Congress Cataloging in Publication Data**

McKay, Robert B.
Legal education.

(An occasional paper - Aspen Institute for Humanistic Studies, Program on Justice, Society and the Individual)
Includes bibliographic references.
1. Law—Study and teaching—United States.
I. Title. II. Series: Aspen Institute for Humanistic Studies. Program on Justice, Society and the Individual. An occasional paper - Aspen Institute for Humanistic Studies, Program on Justice, Society and the Individual.
KF272.M28 340'.07'1173 77-7970
ISBN 0-915436-55-8

**ASPEN INSTITUTE PROGRAM ON JUSTICE, SOCIETY AND THE INDIVIDUAL**

36 West 44th Street
Suite 1309
New York, New York 10036

**Published in the United States of America in 1977**
**by the Aspen Institute for Humanistic Studies**

*All rights reserved*

Copyright 1977 by the Aspen Institute Program on Justice, Society and the Individual
**ISBN: 0-915436-55-8**

Printed in the United States of America

# Aspen Institute for Humanistic Studies

The Aspen Institute for Humanistic Studies is an international non-profit organization. For more than a quarter of a century it has brought together leading citizens from the public and private sectors in the United States and abroad to consider, from a human-centered point of view, major issues in contemporary society. The Institute is an independent organization, not dominated by any particular sector, discipline or group. All elements of society are represented in its activities, including persons from the arts and sciences, business, government, the humanities, labor, the mass media and the professions.

The Institute's overall program includes, at its core, the Executive Seminar Program providing corporate and other leaders with a reflective experience as well as interaction with leaders from other segments of society; and seven thought-leading-to-action programs concerned with the major human and social issues characterizing today's transnational society.

All Institute programs are concerned with suggesting ways of dealing with current issues, identifying the implications of different alternatives and suggesting possible policies and actions for resolving issues. The Institute does not advocate partisan political causes. It is "political" only to the extent that politics represents an active concern for achieving a humane society and the well-being of mankind.

**Robert O. Anderson,** Chairman **Joseph E. Slater,** President

Vice Presidents: **Stephen P. Strickland; Gail L. Potter**

**Program Directors**

**Douglass Cater,** Program Council
**Harlan Cleveland,** International Affairs
**Roland S. Homet, Jr.,** Communications and Society
**Francis Keppel,** Education for a Changing Society
**Robert B. McKay,** Justice, Society and the Individual
**Waldemar Nielsen,** Pluralism and the Commonweal
**Walter Orr Roberts,** Science, Technology and Humanism

**Martin Krasney,** Executive Director, Executive Seminar Program
**Shepard Stone,** Director, Aspen Institute Berlin
**Michael Haltzel,** Deputy Director
**Charles W. Yost,** Special Adviser to the Institute; Coordinator, Aspen Institute Activities with Iran
**Jessie K. Emmet,** Director of Fellowships
**B. R. Kraft, Jr.,** Special Assistant to the President for Planning and Development
**Richard E. Kuhn,** Publishing Coordinator
**King R. Woodward,** Conference Director

## FOREWORD

*by*

**Robert B. McKay**

---

No professional group in the United States is more deeply involved in problem solving than the lawyers. In our tripartite system of government, lawyers control all the positions in the judicial branch, a near majority in the legislative branch, and many of the most significant positions in the executive branch. In addition, they are the principal instruments for the resolution of the public and private disputes of Americans, the most litigious people in the modern world.

If lawyers are important in society, it necessarily follows that the way in which they are trained is also important. The law schools are the gatekeepers of the profession; they determine who will be admitted to the legal education portals and who will be deemed qualified to take the bar examinations that control admission to practice.

Law schools are often regarded within their universities as among the strongest units, and their faculties frequently play a disproportionately prominent role in university decision making.

Law teachers have written extensively and well about the substance and procedure of law, but they have been much less insightful about legal education and the professional responsibility obligations of the law schools.

This paper, prepared for the Bicentennial Conference on law at New York University School of Law, asks some of those questions and suggests that legal education is not meeting its high obligation to the profession and to society.

## LEGAL EDUCATION

Lawyers in the United States have claimed for themselves a monopoly on the instrumentalities of the law and the right to practice in the courts. Assertion has become fact. Lawyers have secured a near monopoly—some would say stranglehold—on the administration of justice. Lawyers sit astride all the avenues for access to justice.

Similarly, law schools have a near monopoly on the training of lawyers. As gatekeepers for those who seek entry to the legal profession, the law schools cannot deny their part in shaping the quality of justice available to the American public. If the training is technically deficient or if it is not responsive to contemporary social needs, the educational failings are reflected in social disarray.

So much is generally understood. But the legal education community has not explicitly accepted—perhaps has not even fully recognized—the implications of this heavy responsibility. More common is the view expressed by Oliver Wendell Holmes that "When we study law we are not studying a mystery but a well-known profession."

That mechanistic view of the legal profession is now generally rejected. But there is no general agreement on a more expansive view of law as dispenser of justice and of legal education as preparation for the delivery of justice.

A beginning can be had in Karl Llewellyn's observation that lawyering, whether in school or in practice, is "trade, culture and profession all in one." He said of the materials of law: "I say in these things there is poetry, in these things there is life, in these things there is beauty. If this be not culture, I do not know where to find it."

The more common perception within the legal profession is that the study of law is an intensely cerebral pursuit. Opinions of even the ablest judges are dissected and criticized; students are trained to think with cool analytic skills; and passions are stilled.

Professor Curtis Berger put the issue strongly:

> I do not assert that legal education makes our graduates evil, but I do believe that legal education makes our graduates less feeling, less caring, less sensitive to the needs of others, less tolerant of the frailties of their fellow creatures, even less alarmed about the injustices of our society, than they were when they entered law school.

Lawyers talk much of professional responsibility, and the law schools teach the conventional wisdom. But we seem not to have thought much, or taught much, beyond those lawyer-devised standards that deal more with conflicts of interest than with conflicts in society, more with the integrity of the adversary system than with the integrity of the pursuit of justice. As Professor Geoffrey Hazard observed, "Morality is not the same thing as law, but it is an indispensable resource in evaluating legal norms and adapting them to changed conditions." And he added: "Possibly the greatest challenge for legal education therefore is that it undertake to be rather more intensely concerned with political and social morality than it has been in times more assured, and perhaps more innocent."

Without question legal education in the United States has met the test of technical proficiency. The law faculties are superb; the law students are at least as good; the libraries are generally excellent; and the structures that house the law schools are often magnificent. In all these respects the law schools are stronger than ever before and better than their counterparts in any other part of the world. That is not good enough—at least in terms of what might have been.

Now that I am squarely confronted with what I had thought would be the pleasant task of praising legal education, I find it difficult to capture the "upbeat" Bicentennial mood. To speak of legal education is, I fear, to speak of missed opportunities, of leadership relinquished, of professional responsibility forsworn.

Let me recount the measures of my disappointment:

*First.* The law schools have remained almost exclusively professional in tone, rejecting repeated attempts for the infusion of the social sciences and the humanities. In defense it is said that law is a "true science" which should not be diluted with the softness of the social sciences and the humanities.

The perception is scarcely new that law and the social sciences have much in common. The need for lawyers to comprehend the teachings of economics, anthropology, political science, and sociology is recognized—but too little acted on. It may be less commonly recognized, but surely no less true, that law is itself a social science. Law can be, and has been, studied as a social phenomenon. Techniques for dispute resolution, the designing of remedies in extended-impact cases, the effect of sentencing and parole procedures on the incidence of crime, and the impact of evidentiary rules upon human conduct all require that legal judgments be informed with behavioral knowledge from the social sciences.

The need of law for the humanities is equally pervasive, although law schools once did not clearly recognize the close relationship that must exist among law, justice, and humanity. There is, for example, the story of the law student long ago who asked in class, "But, sir, is that just?" The professor replied, "If it's justice you're interested in, you should have gone to divinity school." That attitude is long gone from the law schools and from the profession. It is now recognized that law requires the enrichment and compassion of the humanities. Indeed, I will assert that law itself is a humanity, concerned as it must be with history, philosophy, language, and the moral instincts of man.

Law is, as Edward Levi has observed, "a mediating discipline." Law can succeed—and legal education can succeed—only to the extent that law is made comprehensible through the teachings of the social sciences and the humanities.

*Second.* The proud claim to professionalism has been more facade than solid structure. If the interest in professional training had been the sole motivating force, we should long ago have required clinical training of all law students or at least have continued the apprentice programs that were long ago abandoned in nearly all jurisdictions. Law schools have always denied that they are "trade schools." In the effort to be considered academic, law school training has tended to abstraction without the leavening of the humanities.

Why else the emphasis on the Socratic method except, as is so often said, to make each student "think like a lawyer"? When that most circular bit of reasoning is examined, it collapses of its own round weight. The Socratic method is useful, to be sure, in the hands of the truly skillful teacher, but scarcely to the extent once imposed by each instructor in each subject on every student. Belatedly, we have come to the wisdom that there are other ways: the problem method, research seminars, simulation, clinical training, and even guided study.

*Third.* Law schools and law teachers alike have ridden too comfortably on the tide of contemporary legal morality. Legal educators should have led the way to new and higher levels of professional responsibility, which in turn they should have inculcated in their student charges. But law teachers have in general been content to share the easy virtue of the profession. They have trained students to keep open a wary eye for the main chance and a cynical readiness to move with the current moods

of casual acquiescence in client wrongdoing, whether corporate nondisclosure, income tax cheating, or corruption of government at the highest level.

*Fourth.* Legal education has been a willing partner to the elitism of the legal profession as a whole. Most law teachers accept the notion that private practice is the natural and proper goal of all rational law students, and many believe that biggest is best among the law firms. Accordingly, law school training has been principally aimed at the kind of specialized practice peculiar to that institution known as the Wall Street firm, which is now found in every major city in the nation. Indeed, it is only within the last decade that the law schools began to be disquieted that their recruitment and selection process had become so structured that only a few women and almost no blacks, Chicanos, Puerto Ricans, or Native Americans were entering the profession.

These complaints are designedly exaggerated; much has been done in recent years to limit the elitism, to broaden the student base of legal education, to democratize the thrust of the training, and to emphasize the true nature of the professional responsibility that must be accepted by each law school graduate as he or she moves into the profession. But much remains to be done. In some ways, the profession as a whole has moved more rapidly to correct past errors of omission and commission than the law schools. The present challenge is for legal education and the legal profession to move together into the Third Century of American law to serve the needs of justice and democracy. The tools are at hand. They must be grasped, shaped to the necessary tasks, and put to work.

If legal education has made mistakes of emphasis, as I believe it has, there are reasons that make those errors understandable. Lawyers may not be loved—and we have much evidence that they are not; but there is equally convincing evidence that lawyers are increasingly thought to be necessary for nearly every endeavor, public or private, large or small. The legal profession has defined the perimeters of the practice of law and carefully excluded all who cannot utter the password of bar membership.

Consider the lockstep of the profession as it now operates. The process begins no later than college where the performance of the aspiring lawyer is carefully measured by more or less standard grading processes, as further refined by the Law School Admission Test. In recent years only the strongest, as measured by those two criteria, have been allowed to enter the portals of legal education. There the refining process is continued with study and examinations designed to test the same qualities that were measured on the LSAT. Finally, at the end of law school—again a graded performance—there is for nearly all a bar examination, which reviews fitness to practice by testing for the same qualities as did the LSAT and the law school examinations.

Once admitted to the bar the happy practitioner can rest confident that no one who has not gone a similar route can challenge his or her right to secure as large a share of the monopoly pie as other practitioners will permit. The license to practice, once awarded, is rarely taken away, and then only upon the judgment of other lawyers passing upon the wrongdoing of one of their own. Thus the monopoly of the profession by the lawyers is complete, from admission to law school through the entire cycle of a life at the bar. The controls may not quite work from cradle to grave, but certainly from entrance to law school to the end of active practice. In the case of most lawyers that does indeed mean until death.

I do not want to be misunderstood. Protection of the public requires that the practice of law be limited to those who meet professionally exacting standards. The law schools are an essential part of that process, and they have become increasingly skillful at selecting students with high potential for the law and turning them into excellent lawyers. What I do wish to emphasize is that law schools, because they control entry to the profession, have a special responsibility to remember that law, separated from justice, cannot long survive—and would not deserve to survive. If law schools

become so impressed with their unique opportunity that they select only the elite and train them only for an elitist profession, they will have failed to meet their high obligation to work toward the responsible administration of justice.

Thus far I speak largely of the immediate past, the present, and a future that might, at least for a time, continue unless changed by external forces. But it has not always been so. Legal education in the United States has been subject to periods of ebb and flow. At the moment we ride a crest higher than ever before experienced in legal education, although less than a quarter of a century removed from the twentieth century nadir of demand for legal education. In the early 1950s some law schools went out of business, and many were regarded by their parent institutions as precarious and costly appendages. Those times may come again. If the widely predicted oversupply of lawyers is allowed to become a reality, the quality of legal education will again be in jeopardy.

The possibility of a decline in the prestige of legal education is not advanced as a prediction, but as a reminder of what could happen if legal educators and members of the organized bar do not take the necessary steps to make legal services broadly available to those who cannot now afford—or believe they cannot afford—the services of a lawyer even for genuinely needed legal assistance.

There is a very real risk that the legal profession will not satisfy the demand for more readily available and less costly legal services. It is not clear that lawyers as a whole recognize the intimate relationship between the delivery of legal services to *all* who need them and the health of the legal profession. Manifestly, if the economic health of the legal profession becomes less than robust, legal education will suffer. If the applicant pool dwindles significantly, scramble for minimally qualified students will intensify in the marginal schools. Some of the recent entrants to the law school scene would in that event fail, as would some of the not so recent entrants.

The fate of a few law schools may not be a matter of much concern to society in general, which has larger worries. But there would be cause for social alarm if the law schools should continue to put forth an increasing flood of lawyers for whom there is no apparent market. History reminds of the dangers of an oversupply of lawyers. We need look back no further than the 1920s and 1930s to find underemployed lawyers whose ethical standards were shocking even to a more relaxed notion of morality than I hope and believe is the standard today.

It is true that the circumstances are not entirely comparable. Many, perhaps most, of the ethically delinquent lawyers were graduates of law schools with minimal admission standards and low educational standards. Meanwhile, the elite of the bar continued to represent the rich and, we may assume, continued to flourish while the members of the underside of the bar gave the entire profession a bad name.

The situation is not the same today. The 167 American Bar Association-approved schools have vastly higher admission requirements and offer an enormously better legal education than was true in the earlier period. Their graduates are well trained for the law, and we may hope their ethical instincts are better. Nevertheless, experience tells us that even a well trained lawyer might become careless or even indifferent to moral prescriptions if underemployed—or unemployed.

In most jurisdictions the procedures for uncovering and disciplining lawyers who transgress the Code of Professional Responsibility range from the barely acceptable to the downright primitive. If meaningful employment is not found for the large number of lawyers now emerging each year, I fear that the Code of Professional Responsibility and present enforcement procedures will not be adequate to the pressures that would then be placed upon them.

It is not my present purpose to review two centuries of American legal education. That has been done and done well, beginning with such competent observers of the American scene as Alexis

de Tocqueville and Lord Bryce. Their admiring comments about law and lawyers, which have understandably caught the fancy of the profession, do not need repetition here. There was, however, no full study of legal education until 1921 when A. Z. Reed published his useful volume, *Training for the Public Profession of Law.* Other significant contributions have been made by A. H. Chroust in *The Rise of the Legal Profession in America;* by Robert Stevens, in "Two Cheers for 1870: the American Law School," published as a long chapter in *Law in American History,* edited by Messrs. Fleming and Bailyn; and by Gordon Gee and Donald Jackson in a soon-to-be-published volume, *Legal Education and Competency Training: An Historical Perspective.*

Even though it may not be useful to retrace those steps here, the broad lessons of history must be recalled. During most of the two hundred years of United States history we now celebrate, two kinds of legal education alternated and sometimes competed: the apprentice method of training by doing and the law school method of training by study. After the Revolution legal education was most often secured through an apprenticeship. Ever since that time the apprentice system has had a wide appeal. Then, as always in apprentice programs, the apprentice most commonly gained his education more through emulation than direct instruction; if the model was good, the education may have been passable. Moreover, apprentices, then as now, were required to perform a variety of tasks, some of which provided useful training, but some of which served no educational purpose.

Only in recent years have the last vestiges of formal apprentice training been abandoned as a requirement for admission to the bar. A few states, including New York, still allow the taking of the bar examination after supervised study in a law office. In response to the demand for clinical training, suggestions have been renewed that a form of apprentice training should be required. Until the problems that have always plagued office supervision are overcome, these proposals should not dominate discussions about legal education.

Thomas Jefferson was one of the first to criticize the apprentice system, observing that often "the services expected in return have been more than the instructions have been worth." Partly in reaction to these and other inadequacies of the system, and partly in an effort to make sure that "the Body of the People [were] well instructed in their Laws, Rights, and Liberties," law lectures were established, beginning with a professorship at William and Mary College in 1779, first held by George Wythe. (Thomas Jefferson had been his apprentice student.) Similar beginnings were made at Yale, Columbia, Harvard, and the University of Maryland.

These early efforts to develop law faculties within universities were in general unsuccessful. The bar felt that the apprentice system was good enough. Moreover, there began about the same time the rise of non-university-related private law schools such as the Litchfield School founded in 1784 by Tapping Reeve. Instruction was by lecture, and the curriculum does not sound very different from more modern versions. In the one-year program there were lectures on property, contracts, procedure, commercial law, agency, and master and servant, among others. The curriculum was based on Blackstone with some American overlay. Interestingly, more copies of Blackstone's treatise were sold in America than in England, causing Edmund Burke to react with mixed concern and awe for this new breed of Englishmen.

The university-based law school could not be indefinitely held off. Harvard established its law school in 1817, and Yale followed soon after with the absorption of a private school. But development was slow, particularly during the Jacksonian period when admission to the bar became available in many states without the necessity of apprentice training or training in any law school, whether proprietary or university.

By 1850, there were only 15 university schools, 21 by 1860, and 31 by 1870. The history of the modern law school is generally acknowledged to begin about 1870. The changes since that time have been less dramatic than one might expect.

Standards for admission to the bar have been an important complement to legal education. Despite some early efforts in the colonies to prohibit the practice of law, bar associations and standards of admission have been with us from nearly the beginning of American life. The bar organizations have thus exercised considerable control over legal education and admission to practice. Although not uniform, these admission standards were strict and tended to assure that members of the bar were drawn from the better educated class.

This regulatory power suffered temporary eclipse with the advent of Jacksonian Democracy. By the 1860s only nine states had a formal apprentice requirement, and even in those states the length of required service was reduced. While some sort of examination had been required in most jurisdictions before 1830, this requirement was also weakened or abolished during the Jacksonian surge. Messrs. Gee and Jackson have described one such bar examination.

> In California two "law students," who clerked in the same building, had applied for admission to the bar. One day a member of the Supreme Court of California called upon one of the students and announced that he had come to ascertain his professional qualifications. The whole examination consisted of the question: "Is the Legal Tender Act constitutional?" The student replied: "It is!" Whereupon the judge observed: "I have just examined your friend in the other office and he says that the Act is unconstitutional, but we need lawyers who are able to answer great constitutional questions so quickly, right or wrong. You are both admitted."

The course of modern legal education was set with the appointment of Christopher Columbus Langdell as dean of the Harvard Law School in 1870. He is widely remembered for his introduction of the case method of instruction (and the soon-to-follow Socratic method, which many believed to be a necessary adjunct of the case method). But even more important may have been the establishment of the tradition that has since prevailed in this country that the best legal education is to be secured in the university setting. Never mind that apprentice training continued and that proprietary schools continue to this day. Those who could afford the time and price of university law school training went that route; and the leaders of the bar came almost invariably from the university-based schools. The pattern that Harvard established a century ago continues to dominate legal education today. Critics were few, and their voices were largely unheeded. More than half a century ago even as perceptive a critic as Alfred Z. Reed made little impression with his complaint about "the failure of the modern American law school to make any adequate provision in its curriculum for practical training." Fifty years later clinical training was still greeted with some suspicion that it was not academic because based on the realities of practice. Resistance to change of the pattern continues to be stubborn, perhaps less so at Harvard than at other institutions that continue to follow mindlessly without looking to see if the leader has moved on.

It is scarcely too strong to say that the most important changes in legal education between 1870 and 1976 have been statistical. The number of law schools approved by the American Bar Association has risen from 31 to 167. In addition, there are several dozen unapproved schools. (The exact count is never quite sure because some open and close without the usual amenities.) The number of students has fluctuated somewhat, but the overall trend has been markedly up. In 1953, the low point of law student enrollment after the post-World War II bulge, there were only 34,423 students in ABA-approved schools. Within twenty years the figure tripled, and further increases were recorded in 1974 and 1975. In 1976 the enrollment in ABA-approved schools is 116,991. First-year registrations have also continued to rise (39,038 in 1976). The proportion of those who complete the law program with a degree and are admitted to the bar has risen even more dramatically as the number of dropouts for academic and other reasons decreases and as the percentage of those who pass the bar increases. In brief it is easy to understand the concern often expressed about what to do with all those lawyers. Putting aside the indelicate suggestions sometimes offered for disposition of lawyers, the comment that received the most attention was that of an ABA Task Force on Professional Utilization that speculated there would be about 30,000 new admissions to the bar by

1975 (in fact, an understatement), but only about 15,000 traditional legal jobs. Questions naturally arise whether the law schools are working to find new placements for their graduates and whether they are advising applicants and new students of the potential job crunch at the end of the line.

It is not enough for some schools in a strong competitive position to strengthen their own placement efforts, although of course they will, as they must. Individual efforts do no more than push the bodies around, helping some and hurting others. The solution, which must be national in scope, requires careful consideration of the interests of present practitioners and future law students. Most of all, though, the needs of the public must be given first priority. What, we must ask, can lawyers do better than others? How extensive should be their training? What is the most effective means for the delivery of legal services to those who now get none, or not enough, or not the kind they need?

One other statistical observation should be made. The color and sex balance of legal education has changed more in the last ten years than in all its previous history. After the battle against religious discrimination was finally won (and not so long ago at that), law schools remained too long content to fill their places with white males. Until the second half of the twentieth century some of the finest law schools admitted no women, and at most other schools women were so few that the suspicion was winkingly expressed that they must have come in search of husbands. Even as late as the mid-1960s a number of schools approved by the American Bar Association and members in good standing of the Association of American Law Schools did not admit blacks (and probably would not have admitted Chicanos, Puerto Ricans, or Native Americans if any had been so bold as to apply).

All that has changed. The shameful record has been largely corrected. Women are admitted to the law schools without restriction and without special preference (nearly 25 per cent of the total in the current year). They have more than held their own in academic performance and have proved themselves the serious students we should always have known would be the case.

Attraction of blacks and members of other minority groups to the law schools has been more difficult, but has been assisted by special recruitment efforts, financial assistance for those needing help, and even preferential consideration in terms of admission policy. But the number of minority group law students is still disappointingly low, only about 8 percent of the total enrollment; and there are discouraging indications that this is the group most likely to drop in numbers as the total registration slackens or even declines. Whatever the Supreme Court finally does on the issue of preferential admissions, the need for further creative effort is all too clear, if we are not to revert once more to an almost entirely white bar.

As I have already suggested, the most striking thing about legal education is its resistance to change. It is clearly not all bad to withstand transient and faddish demands for change; and it is a positive virtue to resist ill-considered proposals for change. There is so much that is good about legal education that it is tempting to say that all is well. It is my judgment, admittedly biased in favor of my old friend legal education, that the training provided by today's law schools is the best it has ever been. The law teachers are superbly qualified in terms of training, intellectual capacity, and research and writing abilities. Many of them are even good classroom teachers, and quite a few devote a fair measure of their time to *pro bono* activities designed to strengthen the profession or improve the quality of justice in our society.

Contemporary law students are similarly better trained than ever before and have demonstrated their potential for the study of law in ways both measurable and subjective. They are capable of phenomenal intellectual feats of legal analysis, and they are highly skilled in the myriad interconnecting disciplines mostly denied to us, their seniors.

Law libraries have become in many instances truly excellent research laboratories.

Even the curriculum has showed some give. The most notable single addition to the law school scene is a genuine commitment to clinical training, not yet up to what is available in medical schools, but at least open to enterprising students who want a real-life introduction to the profession. In addition, the curriculum in most law schools has been opened up to new electives, not only specialties peculiar to the profession, but as well interdisciplinary courses that introduce law students to economics, psychology, and sociology along with courses in the humanities such as law and philosophy, law and religion, and law and literature.

Look for a moment at the other side of the ledger. Despite much talk of curricular movement, the basic curriculum has emerged almost unscathed, particularly now that law students are becoming again fiercely competitive as they see shrinkage in the job market. The bar examination is not just an additional test. It is a very specific hurdle that is not surmounted by all law students on the first try. It thus becomes a very specific shaper of curriculum. Although many law schools have reduced the number of required courses, Messrs. Gee and Jackson, after an extensive study of law school programs and registrations, observed that "it is probably erroneous to conclude that. . .the courses actually taken by law students have changed." Moreover,

> for those students who are primarily concerned with preparation for the bar examination, there is only one year of real election of courses. Innovations in law school programs that are elective in nature will have to be filled within that one year, short of more extensive curricular and bar examination reforms. Specific reforms like the introduction of clinical programs will either have to be introduced as a new method of instruction in already required courses, or they will have to be fitted into the largely elective third year.

From this scarcely surprising data we can better understand why fewer than one third of all law graduates have any clinical training and why so many of the new electives are underpopulated. The striving in law school by students is for success, as measured by graded performance in traditional subject matter that leads to a traditional bar examination and traditional hiring practices in the law firms. Recall the straight-line theory of legal education, beginning with selection of a college, graded performance there and on the LSAT, selection of a law school, graded performance there, and a bar examination as the final stage of an essentially unitary process.

Once these propositions are understood, it is easier to comprehend how the law schools withstood so nearly completely the winters of student discontent in the late 1960s and early 1970s. Whatever may have been the impact at the time, it has mostly disappeared without a trace. Is the assertion too strong? Perhaps. But consider the record. Admission policies are still based largely on college record and LSAT. The curriculum is not much changed—except for clinical training, which did not come in response to student demands. The poverty studies and urban courses are mostly gone or underpopulated; and the courses on civil rights and individual liberties are back to the relatively few who were always interested. Grades are back at the old stand, and the competition for them is intense. The emphasis is on the individual, not the rights of individuals in the abstract, but on self-interest.

The picture I draw is of course too dark. Many law students are unselfishly motivated to work for prison reform, urban improvement, environmental issues, and other *pro bono* causes. My concern is that for many the excitement of law as a justice enterprise seems diminished.

---

There has been no lack of considered thought about the needs of legal education. But somehow nothing much has come of any of the proposals—again excepting clinical training. The plans of the 1920s for true interdisciplinary training, although periodically revived with new flourishes, have never had a major impact on the law schools. Similarly, the efforts to infuse the humanities into law have not yet succeeded to any significant extent. Able legal educators have reviewed the past,

studied the present, and offered suggestions for an uncertain future;[1] but legal education has remained essentially impervious to change. Proposals for a lowered threshold of college attendance as a requirement for admission to law school have made no greater impact than the proposals to reduce law school to a two-year program.

The one thing on which there is general agreement is that law schools are underfinanced and that their parent universities too often try to tap law schools for some imagined pool of new resources. I join in the chorus that law schools need more funds, but insist as a condition that legal education decide where it is going.

Law schools, law teachers, bar examiners, and the legal profession as a whole have become so engrossed in the pursuit of professional excellence that we sometimes forget that justice is what it should be all about. There is no absence of ringing statements in behalf of virtue; but sometimes we do not pay serious enough attention to the principles to which we are committed. For example, we should take to heart the commands of the Code of Professional Responsibility.

*Canon 1:* "A lawyer should assist in maintaining the integrity and competence of the legal profession."

*Canon 2:* "A lawyer should assist the legal profession in fulfilling its duty to make counsel available."

*Canon 8:* "A lawyer should assist in improving the legal profession."

We accept those mandates, and each of us in his or her own way works at meeting the obligation there specified. But I assert strongly that we have failed to satisfy those standards. At least non-lawyers do not believe that lawyers are fully committed to those concepts.

If law schools are to continue to expand—or even to stay constant—in numbers of schools and of graduates, legal educators must share the responsibility with the organized bar for determining what use is to be made of this magnificent resource.

For the first time in the history of this or I believe any nation there is an opportunity to provide adequate legal services of high quality to all. The lawyers now coming out of American law schools are the most talented we have ever known. But the mechanism for the delivery of legal services does not work well. The organized bar is beginning to examine these questions, including better care for the indigent, prepaid legal services, lawyer fees and lawyer advertising, public interest practice, specialization, certification for competence, heightened standards of professional responsibility, and more effective discipline procedures. The law schools are not enough involved, although in my judgment they have much to contribute to a properly disinterested inquiry into how best to advance the cause of justice for all.

In this Bicentennial year, and for the next century as well, we can settle for no less.

[1] **Among the most useful are Packer and Ehrlich, *New Directions in Legal Education* (1973); Association of American Law Schools, Carrington, ed., *Training for the Public Professions of the Law: 1971* (1971); and Boyer and Cramton, "American Legal Education: An Agenda for Research and Reform," 59 *Cornell Law Review* 221 (1974).**

# Some Publications of the Aspen Institute for Humanistic Studies

## Books

**Iran: Past, Present and Future**
Edited by Jane Jacqz, African-American Institute
512 pages—$6.95 paper, $11.95 cloth

**Women and Men: Changing Roles**
Edited by Libby A. Cater, Aspen Institute for Humanistic Studies, and Anne Firor Scott, Duke University, with Wendy Martyna, Stanford University
275 pages—$3.95 paper

**The Monday Morning Imagination: Report from the Boyer Workshop on State University Systems**
Edited by Martin Kaplan, Aspen Institute for Humanistic Studies
160 pages—$3.95 paper

## Occasional Papers

**The Planetary Bargain: Proposals for a New International Economic Order to Meet Human Needs**
36 pages—$1.50

**From Independence to Interdependence**
by Ralph L. Ketcham, Syracuse University
40 pages—$1.50

**Jerusalem: A Universal Cultural and Historical Resource**
by Colin Williams, Yale Divinity School
24 pages—$2.00

**Educational Indicators and Educational Policy**
by Thomas C. Thomas and Meredith A. Larson, Stanford Research Institute
32 pages—$1.50

**The Demographic Context of Educational Policy Planning**
by Peter A. Morrison, The RAND Corporation
40 pages—$1.50

**The Not-So-Steady State of Governance in Higher Education**
by Donald M. Stewart, University of Pennsylvania
32 pages—$1.50

**Students, Schools, and Educational Policy: A Sociological View**
by Sarane Spence Boocock, The Russell Sage Foundation
36 pages—$1.50

**A Developmental Psychologist Looks at Educational Policy: Or the Hurrier I Go the Behinder I Get**
by Helen L. Bee, developmental psychologist

**The Declining Economic Value of Higher Education and the American Socia. System**
by Richard B. Freeman, Harvard University
32 pages—$1.50

**Governance of Elementary and Secondary Education**
by Michael W. Kirst, Stanford University
32 pages—$1.50

# Aspen Institute for Humanistic Studies

**Robert O. Anderson,** Chairman
**Joseph E. Slater,** President

**Gaylord Freeman,** Vice Chairman
**James H. Smith, Jr.,** Co-Vice Chairman


## Trustees

**Thornton F. Bradshaw**
President, Atlantic Richfield Company

**Lord Alan Bullock**
Aspen Institute Fellow
Master, St. Catherine's College, Oxford University

**Douglass Cater**
Aspen Institute Fellow
President, Observer International

**Jack Conway**
Vice President
United Way of America

**Marion Countess Dönhoff**
Publisher, *Die Zeit*

**William Gomberg**
Wharton School
The University of Pennsylvania

**William C. Greenough**
Chairman, TIAA-CREF

**Pehr G. Gyllenhammar**
President, AB Volvo

**Najeeb E. Halaby**
Halaby International Corporation

**Robert L. Hoguet**
Tucker, Anthony & R. L. Day

**Shirley M. Hufstedler**
Judge, U.S. Court of Appeals

**Robert S. Ingersoll**
Vice Chairman
Board of Trustees
University of Chicago

**Howard W. Johnson**
Chairman of the Corporation
Massachusetts Institute of Technology

**Alexander A. Kwapong**
Vice-Rector
United Nations University
Tokyo

**George C. McGhee**
McGhee Production Company

**Donald C. McKinlay**
Holme Roberts & Owen

**Robert S. McNamara**
President, World Bank

**John M. Musser**
President
General Service Foundation

**Paul H. Nitze**
School of Advanced International Studies
The Johns Hopkins University

**Alfonso Ocampo-Londono**
President
Foundation for Industrial Development, Colombia

**Saburo Okita**
President
The Overseas Economic Cooperation Fund, Tokyo

**James A. Perkins**
Chairman
International Council for Educational Development

**Walter Orr Roberts**
Aspen Institute Fellow
Director, Program on Science, Technology and Humanism

**Soedjatmoko**
National Development Planning Agency
Jakarta, Indonesia

**Shepard Stone**
Director
Aspen Institute Berlin

**Maurice F. Strong**
Chairman
Petro-Canada

**Phillips Talbot**
President
The Asia Society

**Alexander B. Trowbridge**
Vice Chairman
Allied Chemical Corporation

**Leonard Woodcock**
Former President
United Automobile Workers of America

## Trustees Emeriti

**Herbert Bayer**
Aspen Institute Fellow

**John F. Merriam**

**Elizabeth Paepcke**

**William E. Stevenson**

## Honorary Trustees

**Her Imperial Majesty Farah Pahlavi**
The Shahbanou of Iran

**Mortimer J. Adler**
Director
Institute for Philosophical Research

**Paul Horgan**
Aspen Institute Fellow
Author

**Karl Menninger**
The Menninger Foundation

**Leo Schoenhofen**
Chairman
MARCOR

**Barbara Ward** (Lady Jackson)
Baroness of Lodsworth

**Thomas J. Watson, Jr.**
IBM Corporation

## Special Advisers to the Institute

**Ernest L. Boyer**
U.S. Commissioner of Education
Office of Education
Department of H.E.W.

**Antonio Carrillo-Flores**
Former Minister of Foreign Affairs, Mexico

**Alvin C. Eurich**
President
Academy for Educational Development

**John W. Gardner**
Former Chairman,
Common Cause

**Fereydoun Hoveyda**
Permanent Representative of Iran to the United Nations

**Teddy Kollek**
Mayor, Jerusalem

**Martin Meyerson**
President
The University of Pennsylvania

**Russell W. Peterson**
President
New Directions

**John G. Powers**
Academy for Educational Development

**Glen O. Robinson**
Chairman
Aspen Communications Policy Project

**L. William Seidman**
Former Economic Advisor to the President,
The White House

**Jan Szczepanski**
Vice President
Polish Academy of Sciences
Warsaw

**Mostafa Tolba**
Executive Director
United Nations Environment Programme

**Thomas W. Wilson, Jr.**
Office of the Secretary General, United Nations

**Daniel Yankelovich**
Yankelovich, Skelly and White

**Charles W. Yost**
Former U.S. Ambassador to the United Nations

## Other Corporate Officers

**Donald C. McKinlay**
General Counsel and Secretary

**Fanny L. Stiller**
Treasurer

**Jill S. Davis**
Assistant Secretary


## Offices of the Aspen Institute

**Headquarters**
(Including Executive Seminar Program)
717 Fifth Avenue
New York, N.Y. 10022
(212) 759-1053

**Summer Office**
1000 North Third Street
Aspen, Colorado 81611
(303) 925-7010

**Aspen Institute Berlin**
Inselstrasse 10
1000 Berlin 38, Germany
803-1090

**Aspen Institute Facility International House of Japan, Inc.**
11--16, Roppongi, 5' Chome
Minato-Ku, Tokyo 106
406-3011

**Aspen Institute Hawaii**
Sea-Mountain
Island of Hawaii, Hawaii
(808) 928-8314

**Program on Communications and Society**
1785 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 462-2011

**Program in Education for a Changing Society**
6 Appian Way
Cambridge, Mass. 02138
(617) 495-4677

**Program in Environment and the Quality of Life**
1755 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 387-7800

**Program in International Affairs**
Box 2820
Princeton, N.J. 08540
(609) 921-1141

**Program on Justice, Society and the Individual**
36 West 44th Street
New York, N.Y. 10036
(212) 730-0168

**Program on Pluralism and the Commonweal**
717 Fifth Avenue
New York, N.Y. 10022
(212) 644-6841

**Program on Science, Technology and Humanism**
1919 14th Street, #811
Boulder, Colorado 80302
(303) 443-1230

**Special Adviser Yost's Office**
1755 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 387-7800